(vi) other domestic crude oils the first sale of which is exempt from the provisions of this part—included in the volume of domestic crude oil so sold. The certification shall also contain a statement that the price charged for the domestic crude oil is no greater than the maximum price permitted pursuant to this part.

(2) Each seller of domestic crude oil, other than a producer of domestic crude oil, shall make the certification required by this paragraph as soon as practicable after receipt of the required certifications from its sellers, but in no event later than 30 days following such receipt. However, if the domestic crude oil is not sold until after the expiration of the thirty-day period, the certification required by this paragraph shall be made within ten days following the sale of the domestic crude oil.

(3) All certifications required by this paragraph shall relate only to the actual volumes of crude oil included in any mixed blend of crude oil and other refined petroleum products and residual fuel oil.

[¶ 13,883.15]

(c) No firm may sell domestic crude oil unless it provides the certification required by this section. No firm may knowingly purchase domestic crude oil for which there is no certification as required by this section; provided, however, that the provisions of this paragraph do not apply to the sale of domestic crude oil to a firm under circumstances of economic or other coercion in which the buyer, because of its need for crude oil, had no reasonable alternative but to purchase the domestic crude oil for which there is no certification, and such firm promptly reports the purchase to the Federal Energy Administration for investigation.

[¶ 13,883.20]

(d) All certifications required by this section shall be in writing, either upon an invoice or billing or by separate instrument, and shall be effective only when delivered to and received by the purchaser of domestic crude oil.

.01 Subsection (a)(1), 42 F. R. 41565 (August 17, 1977); subsection (a)(2)(i), 44 F. R. 25828 (May 2, 1979); subsection (a)(2)(ii), 42 F. R. 62897 (December 14, 1977); subsection (a)(2)(iii), 44 F. R. 22010 (April 12, 1979); subsection (a)(3)(i), 44 F. R. 25828 (May 2, 1979); subsections (a)(3)(ii), 42 F. R. 62897 (December 14, 1977); subsection (a)(3)(iii), 44 F. R. 22010 (April 12, 1979), subsection (a)(4), 43 F. R. 33679 (August 1, 1978); subsection (a)(5), 42 F. R. 41565 (August 17, 1977); subsection (b)(1), 43 F. R. 33679 (August 1, 1978); subsections (b)(1)(i)-(b)(1)(ii), 43 F. R. 26540 (June 20, 1978), subsections (b)(1)(iii)-(b)(1)(v), 42 F. R. 64856 (December 29, 1977); subsection (b)(2), 42 F. R. 41565 (August 17, 1977); subsections [illegible], 42 F. R. 62897 (December 14, 1977).

.2 Historical record.—Section 212.131 originated in 39 F. R. 31622 (8/30/74), effective 8/29/74, and read as follows until its amendment in 39 F. R. 42246 (12/4/74), effective 11/29/74:

§ 212.131 Certification of domestic crude petroleum sales.

Each producer and each seller of domestic crude petroleum shall, with respect to each sale of domestic crude petroleum other than an allocation sale pursuant to Subpart C of Part 211, certify in writing to the purchaser: (a) The ceiling price of that domestic crude petroleum (in a first sale), (b) the amount of stripper well crude petroleum, (c) the amount of new crude petroleum, (d) the amount of released crude petroleum, and (e) the amount of old crude petroleum. The certification shall also contain a statement that the price charged for the domestic crude petroleum is no greater than permitted pursuant to this part.

In 39 F. R. 42246 (11/29/74), effective 11/29/74, section 212.131 became subsection (a) when (b) and (c) were added.

Subsection (a)(1), in 39 F. R. 42246 (11/29/74), effective 11/29/74, read as follows until its amendment in 41 F. R. 4931 (2/3/76), effective 2/1/76:

(a)(1) Each producer of domestic crude petroleum shall, with respect to a first sale of domestic crude petroleum, certify in writing to the purchaser: (i) the ceiling price of that domestic crude petroleum, (ii) the amount of stripper well crude petroleum, (iii) the amount of new crude petroleum, (iv) the amount of released crude petroleum, and (v) the amount of old crude petroleum, *provided* that the certification requirements of this paragraph (a)(1) may be complied with by a one-time certification by a producer to the purchaser as to the base production control level crude petroleum for each month of 1972 for the particular property. The certification shall also contain a statement that the price charged for the domestic crude petroleum is no greater than the maximum price permitted pursuant to this part.

Subsection (a)(1), in 41 F. R. 4931 (2/3/76), effective 2/1/76, read as follows until its amendment in 41 F. R. 35171 (8/26/76), effective 9/1/76:

(a)(1) Each producer of domestic crude oil shall, with respect to a first sale of domestic crude oil, certify in writing to the purchaser: (i) the ceiling price or prices of that domestic crude oil, (ii) the amount of stripper well crude oil, (iii) the amount of new crude oil, (iv) the amount of released crude oil (produced and sold prior to February 1, 1976), and (v) the amount of old crude oil, provided that the certification requirements of this paragraph (a)(1) may be complied with by a one-time certification by a producer to the purchaser as to the base production control level for each month of 1972 for the particular property (prior to February 1, 1976) or as to the base production control level for average monthly old crude oil production and sale in 1972 or 1975 (effective February 1, 1976), and the lower and upper tier ceiling prices for that domestic crude oil. The certification shall also contain a statement that the price charged for the domestic crude oil is no greater than the maximum price permitted pursuant to this part. Each producer of domestic crude oil shall, in the month of February 1976, certify in writing to each purchaser for each property whether 1972 or 1975 will thereafter be used to determine the property's base production control level.

Subsection (a)(1), in 41 F. R. 35171 (8/26/76), effective 9/1/76, read as follows until its amendment in 41 F. R. 43393 (10/1/76), effective 9/1/76:

§ 212.131 Certification of domestic crude oil sales.

(a)(1) *Stripper well properties.* With respect to each stripper well property, the producer shall certify in writing to each purchaser of crude oil produced from that property:

(i) That the property concerned has qualified as a stripper well property;

(ii) The average daily production for the 12 month period during which the property qualified as a stripper well property; and

(iii) The highest posted price on September 30, 1975, for transactions in that particular grade of crude oil in that field in September 1975, or if there was no posted price in that field for that grade

of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted.

The certification required under paragraph (a)(1) of this section shall be made (i) on or before October 1, 1976, with respect to any property which qualified as a stripper well property on or before August 1, 1976; and (ii) with respect to any property which qualifies as a stripper well property after August 1, 1976, within 60 days from the date that such property qualifies as a stripper well property.

Subsection (a)(2) originated in 39 F. R. 42246 (12/4/74), effective 11/29/74, and read as follows until its amendment in 40 F. R. 28447 (7/7/75), effective 7/1/75:

(2) Each seller of domestic crude petroleum, other than a producer of domestic crude petroleum covered by paragraph (a)(1) of this section shall, with respect to each sale of domestic crude petroleum other than (i) an allocation sale pursuant to § 211.65 of this chapter, or (ii) a sale in which no volumes of old crude petroleum are deemed to have been transferred pursuant to § 211.67(g) of this chapter, certify in writing to the purchaser the amount of old crude petroleum included in the volume of domestic crude petroleum so sold. The certification shall also contain a statement that the price charged for the domestic crude petroleum is no greater than the maximum price permitted pursuant to this part.

Subsection (a)(2), in 40 F. R. 28447 (7/7/75), effective 7/1/75, read as follows until its amendment in 41 F. R. 36172 (8/26/76), effective 9/1/76:

(2) Each seller of domestic crude petroleum, other than a producer of domestic crude petroleum covered by paragraph (a)(1) of this section shall, with respect to each sale of domestic crude petroleum other than (i) an allocation sale pursuant to § 211.65 of this chapter, or (ii) a sale in which no volumes of old crude petroleum are deemed to have been transferred pursuant to § 211.67(g) of this chapter, certify in writing to the purchaser the amount of old crude petroleum included in the volume of domestic crude petroleum so sold. The certification shall also contain a statement that the price charged for the domestic crude petroleum is no greater than the maximum price permitted pursuant to this part.

Each seller of domestic crude petroleum, other than a producer of domestic crude petroleum, shall make the certification required by this paragraph as soon as practicable after receipt of the required certifications from its sellers, but in no event later than 30 days following such receipt. However, if the domestic crude petroleum is not sold until after the expiration of the thirty-day period, the certification required by this paragraph shall be made within ten days following the sale of the domestic crude petroleum.

Subsection (a)(2), in 41 F. R. 36172 (8/26/76), effective 9/1/76, read as follows until its amendment in 41 F. R. 37309 (9/3/76), effective 9/1/76:

(2) *Non-stripper well properties.* (i) With respect to each sale of crude oil from a property which has not qualified as a stripper well property, the producer shall certify in writing to the purchaser the number of barrels of new crude oil and the number of barrels of old crude oil. With respect to any property which has not qualified as a stripper well property, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(2)(A) may be complied with by a one-time certification to the purchaser of the property's monthly base production control level determined pursuant to 10 CFR 212.72, and whether based upon production and sale of crude oil in 1972 or upon production and sale of old crude oil in 1975.

(ii) With respect to each property which has not qualified as a stripper well property, the producer shall certify in writing once to each purchaser of crude oil produced and sold from that property:

(A) the highest posted price at 7 a. m. local time, May 15, 1973, for transactions in that grade of crude oil in that field, or if there was no posted

price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; and

(B) the highest posted price on September 30, 1975 for transactions in that particular grade of crude oil in that field in September 1975, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted.

(iii) The one-time certification required under paragraph (a)(2)(ii) of this section, and the one-time certification permitted under paragraph (a)(2)(i) of this section, shall be made on or before October 1, 1975, provided that with respect to any property from which crude oil has not been produced and sold prior to August 1, 1976, the one-time certification required under paragraph (a)(2)(ii) of this section, and the one-time certification permitted under paragraph (a)(2)(A) of this section, shall be made within 60 days from the date when such crude oil is first produced and sold.

Subsection (a)(2), in 41 F. R. 37309 (9/3/76), effective 9/1/76, read as follows until its amendment in 41 F. R. 43393 (10/1/76), effective 9/1/76:

(2) *Non-stripper well properties.* (i) With respect to each sale of crude oil from a property which has not qualified as a stripper well property, the producer shall certify in writing to the purchaser the number of barrels of new crude oil and the number of barrels of old crude oil. With respect to any property which has not qualified as a stripper well property, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(2)(i) may be complied with by a one-time certification to the purchaser of the property's monthly base production control level determined pursuant to 10 CFR 212.72, and whether based upon production and sale of crude oil in 1972 or upon production and sale of old crude oil in 1975.

(ii) With respect to each property which has not qualified as a stripper well property, the producer shall certify in writing once to each purchaser of crude oil produced and sold from that property:

(A) The highest posted price at 6 a. m., local time, May 15, 1973, for transactions in that grade of crude oil in that field, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; and

(B) The highest posted price on September 30, 1975 for transactions in that particular grade of crude oil in that field in September 1975, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted.

(iii) The one-time certification required under paragraph (a)(2)(ii) of this section, and the one-time certification permitted under paragraph (a)(2)(i) of this section, shall be made on or before October 1, 1975, provided that with respect to any property from which crude oil has not been produced and sold prior to August 1, 1976, the one-time certification required under paragraph (a)(2)(ii) of this section, and the one-time certification permitted under paragraph (a)(2)(i) of this section, shall be made within 60 days from the date when such crude oil is first produced and sold.

Subsection (a)(2)(i), in 41 F. R. 43393 (10/1/76), effective 9/1/76, read as follows until its amendment in 42 F. R. 41565 (8/17/77), effective 6/1/77:

(2) *Non-stripper well properties.* (i) With respect to each sale of crude oil from a property which has not qualified as a stripper well property, the producer shall certify in writing to the purchaser the number of barrels of new crude oil and the number of barrels of old crude oil. With respect to any property which has not qualified as a stripper well property, and from which crude oil is

only sold to one purchaser, the requirements of this paragraph (a)(2)(i) of this section may be complied with by a one-time certification to the purchaser of the property's monthly base production control level determined pursuant to 10 CFR 212.72, whether based upon production and sale of crude oil in 1972 or upon production and sale of old crude oil in 1975, and, if applicable, either the property's adjusted base production control level determined pursuant to 10 CFR 212.76 or the information necessary to compute such adjusted base production control level pursuant to 10 CFR 212.76.

Subsection (a)(2)(i), in 42 F. R. 41565 (8/17/77), effective 6/1/77 read as follows until its amendment in 42 F. R. 62897 (12/14/77), effective 1/1/78:

(2) *Non-stripper well properties.* (i) With respect to each sale of crude oil from a property which has not qualified as a stripper well property, the producer shall certify in writing to the purchaser the number of barrels, if any, of—

(A) lower-tier ("old") crude oil;

(B) upper-tier ("new") crude oil, excluding any crude oil transported through the trans-Alaska pipeline; and

(C) crude oil transported through the trans-Alaska pipeline.

With respect to any property which has not qualified as a stripper well property, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(2)(i) may be complied with by a one-time certification to the purchaser of the property's monthly base production control level determined pursuant to § 212.72, whether based upon production and sale of crude oil in 1972 or upon production and sale of old crude oil in 1975, and, if applicable, either the property's adjusted base production control level determined pursuant to § 212.76 or the information necessary to compute such adjusted base production control level pursuant to § 212.76.

Subsection (a)(2)(i), in 42 F. R. 62897 (12/14/77), effective 1/1/78, read as follows until its amendment in 43 F. R. 26540 (6/20/78), effective 6/1/78:

(2) *Non-stripper well properties.* (i) with respect to each sale of crude oil from a property which has not qualified as a stripper well property, the producer shall certify in writing to the purchaser the number of barrels, if any, of—

(A) lower tier ("old") crude oil (separately identifying any California lower tier crude oil, as defined in § 211.62 of Part 211 of this chapter);

(B) upper tier ("new") crude oil, excluding any crude oil transported through the trans-Alaska pipeline; and

(C) crude oil transported through the trans-Alaska pipeline.

With respect to any property which has not qualified as a stripper well property, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(2)(i) may be complied with by a one-time certification to the purchaser of the property's monthly base production control level determined pursuant to § 212.72, whether based upon production and sale of crude oil in 1972 or upon production and sale of old crude oil in 1975, and, if applicable either the property's adjusted base production control level determined pursuant to §212.76 or the information necessary to compute such adjusted base production control level pursuant to § 212.76.

Subsection (a)(2)(i), in 43 F. R. 26540 (6/20/78), effective 6/1/78, read as follows until its amendment in 43 F. R. 33679 (8/1/78), effective 9/1/78:

(2) *Non-stripper well properties.* (i) with respect to each sale of crude oil from a property which has not qualified as a stripper well property, the producer shall certify in writing to the purchaser the number of barrels, if any, of—

(A) lower tier ("old") crude oil (separately identifying any California lower tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California lower tier crude oil at the time of the sale);

(B) upper tier ("new") crude oil (separately identifying any California upper tier crude oil, as defined in

§ 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California upper tier crude oil at the time of the sale), excluding any crude oil transported through the trans-Alaska pipeline; and

(C) crude oil transported through the trans-Alaska pipeline. With respect to any property which has not qualified as a stripper well property, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(2)(i) may be complied with by a one-time certification to the purchaser of the property's monthly base production control level determined pursuant to § 212.72, whether based upon production and sale of crude oil in 1972 or upon production and sale of old crude oil in 1975, and, if applicable either the property's adjusted base production control level determined pursuant to § 212.76 or the information necessary to compute such adjusted base production control level pursuant to § 212.76; *provided, however,* that the producer shall certify to the purchaser the amounts and gravity of California lower tier crude oil and California upper tier crude oil in each sale.

Subsection (a)(2)(i), in 43 F. R. 33679 (8/1/78), effective 9/1/78, read as follows until its amendment in 44 F. R. 25828 (5/2/79), effective 6/1/79:

(2) *Non-stripper well properties.* (i) With respect to each sale of crude oil from a property which has not qualified as a stripper well property, the producer shall certify in writing to the purchaser the number of barrels, if any, of—

(A) lower-tier ("old") crude oil (separately identifying any California lower-tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California lower tier crude oil at the time of the sale);

(B) upper-tier ("new") crude oil (separately identifying any California upper tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California upper tier crude oil at the time of the sale), excluding any crude oil transported through the trans-Alaska pipeline;

(C) crude oil transported through the trans-Alaska pipeline; and

(D) incremental tertiary crude oil as determined pursuant to § 212.78.

With respect to any property (except a property with respect to which any amount of crude oil is or at any time has been certified by the producer as incremental tertiary crude oil) which has not qualified as a stripper well property, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(2)(i) may be complied with by a one-time certification to the purchaser of the property's monthly base production control level determined pursuant to § 212.72, whether based upon production and sale of crude oil in 1972 or upon production and sale of old crude oil in 1975, and, if applicable, either the property's adjusted base production control level determined pursuant to § 212.76 or the information necessary to compute such adjusted base production control level pursuant to § 212.76; *provided, however,* that the producer shall certify to the purchaser the amounts and gravity of California lower tier crude oil and California upper tier crude oil in each sale.

Subsection (a)(2)(iii) in 41 F. R. 43393 (10/1/76), effective 9/1/76, and read as follows until its amendment in 44 F. R. 22010 (4/12/79), effective 6/1/79:

(iii) The certification required under this paragraph (a)(2) of this section shall be made within the consecutive two-month period immediately following the month of September 1976 or, with respect to any property from which crude oil has not been produced and sold prior to September 30, 1976, the certification required under this paragraph (a)(2) of this section shall be made within the two-month period immediately following the first month in which crude oil is produced and sold.

Subsection (a)(3) originated in 41 F. R. [illegible] (8/26/76), effective 9/1/76, read as follows until its amendment in 41 F. R. 47309 (9/3/76), effective 9/1/76:

(3) *Unitized properties.* (i) With respect to each sale of crude oil from a

unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing to the purchaser the number of barrels of new crude oil (and whether "actual new crude oil" or "imputed new crude oil" determined pursuant to 10 CFR 212.75(b)), the number of barrels of old crude oil, and the number of barrels of imputed stripper well crude oil (if any) determined pursuant to 10 CFR 212.75(b). With respect to any unitized property for which the producer has determined a unit base production control level, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(3)(i) may be complied with by a one-time written certification to the purchaser of (A) the monthly unit base production control level determined pursuant to 10 CFR 212.75(b); (B) the amount of imputed new crude oil (if any, determined pursuant to 10 CFR 212.75(b)); and (C) the amount of imputed stripper well crude oil (if any, determined pursuant to 10 CFR 212.75(b)).

(ii) With respect to each unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing once to each purchaser of crude oil produced from the property:

(A) the highest posted price at 6 a.m., local time May 15, 1973, for transactions in that grade of crude oil in that field, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; and

(B) the highest posted price on September 30, 1975, for transactions in that particular grade of crude oil in that field in September 1975, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted.

(iii) The one-time certification required under paragraph (a)(3)(ii) of this section, and the one-time certification permitted under paragraph (a)(3)(i) of this section, shall be made on or before October 1, 1975, provided that with respect to any unitized property for which a unit base production control level has not been established prior to August 1, 1976, the one-time certification required under paragraph (a)(3)(ii) of this section, and the one-time certification permitted under paragraph (a)(3)(A) of this section, shall be made within 60 days from the date when such unit base production control level is established.

Subsection (a)(3), in 41 F. R. 37309 (9/3/76), effective 9/1/76, read as follows until its amendment in 41 F. R. 43393 (10/1/76), effective 9/1/76:

(3) *Unitized properties.* (i) With respect to each sale of crude oil from a unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing to the purchaser the number of barrels of new crude oil (and whether "actual new crude oil" or "imputed new crude oil" determined pursuant to 10 CFR 212.75(b)), the number of barrels of old crude oil, and the number of barrels of imputed stripper well crude oil (if any) determined pursuant to 10 CFR 212.75(b). With respect to any unitized property for which the producer has determined a unit base production control level, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(3)(i) may be complied with by a one-time written certification to the purchaser of (A) the monthly unit base production control level determined pursuant to 10 CFR 212.75(b); (B) The amount of imputed new crude oil (if any, determined pursuant to 10 CFR 212.75(b)); and (C) The amount of imputed stripper well crude oil (if any, determined pursuant to 10 CFR 212.75(b)).

(ii) With respect to each unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing once to each purchaser of crude oil produced from the property:

(A) The highest posted price at 6 a. m., local time, May 15, 1973, for transactions in that grade of crude oil in that field, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; and

(B) The highest posted price on September 30, 1975, for transactions in that particular grade of crude oil in that field in September 1975, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted.

(iii) The one-time certification required under paragraph (a)(3)(ii) of this section, and the one-time certification permitted under paragraph (a)(3)(i) of this section, shall be made on or before October 1, 1975, provided that with respect to any unitized property for which a unit base production control level has not been established prior to August 1, 1976, the one-time certification required under paragraph (a)(3)(ii) of this section, and the one-time certification permitted under paragraph (a)(3)(i) of this section, shall be made within 60 days from the date when such unit base production control level is established.

Subsection (a)(3)(i), in 41 F. R. 43393 (10/1/76), effective 9/1/76, read as follows until its amendment in 42 F. R. 41565 (8/17/77), effective 6/1/77:

(3) *Unitized properties.* (i) With respect to each sale of crude oil from a unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing to the purchaser the number of barrels of new crude oil (if any, and whether "actual new crude oil" or "imputed new crude oil" determined pursuant to 10 CFR 212.75(b)), the number of barrels of old crude oil, and the number of barrels of imputed stripper well crude oil (if any) determined pursuant to 10 CFR 212.75(b). With respect to any unitized property for which the producer has determined a unit base production control level, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(3)(i) of this section may be complied with by a one-time written certification to the purchaser of (A) the monthly unit base production control level determined pursuant to 10 CFR 212.75(b); (B) the amount of imputed new crude oil (if any, determined pursuant to 10 CFR 212.75(b)); and (C) the amount of imputed stripper well crude oil (if any, determined pursuant to 10 CFR 212.75(b)).

Subsection (a)(3)(i), in 42 F. R. 41565 (8/17/77), effective 6/1/77 read as follows until its amendment in 42 F. R. 62897 (12/14/77), effective 1/1/78:

(3) *Unitized properties.* (i) With respect to each sale of crude oil from a unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing to the purchaser the number of barrels of—

(A) lower-tier ("old") crude oil;

(B) upper-tier ("new") crude oil, if any, including either "actual new crude oil" or "imputed new crude oil" determined pursuant to § 212.75(b), but excluding any crude oil transported through the trans-Alaska pipeline;

(C) crude oil transported through the trans-Alaska pipeline, if any; and

(D) imputed stripper well crude oil, if any, determined pursuant to § 212.75(b). With respect to any unitized property for which the producer has determined a unit base production control level, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(3)(i) may be complied with by a one-time written certification to the purchaser of—

(A) the monthly unit base production control level, determined pursuant to § 212.75(b);

(B) the number of barrels of "imputed new crude oil," if any, determined pursuant to § 212.75(b), excluding any crude oil transported through the trans-Alaska pipeline;

(C) the number of barrels of crude oil transported the trans-Alaska pipeline, if any; and

(D) the number of barrels of imputed stripper well crude oil, if any, determined pursuant to § 212.75(b).

Subsection (a)(3)(i), in 42 F. R. 62897 (12/14/77), effective 1/1/78, read as follows until its amendment in 43 F. R. 26540 (6/20/78), effective 6/1/78:

(3) *Unitized properties.* (i) With respect to each sale of crude oil from a unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing to the purchaser the number of barrels of—

(A) lower tier ("old") crude oil (separately identifying any California lower tier crude oil as defined in § 211.62 of Part 211 of this chapter);

(B) upper tier ("new") crude oil, if any, including either "actual new crude oil" or "imputed new crude oil" determined pursuant to § 212.75(b), but excluding any crude oil transported through the trans-Alaska pipeline;

(C) crude oil transported through the trans-Alaska pipeline, if any; and

(D) imputed stripper well crude oil, if any, determined pursuant to § 212.75(b). With respect to any unitized property for which the producer has determined a unit base production control level, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(3)(i) may be complied with by a one-time written certification to the purchaser of—

(A) the monthly unit base production control level, determined pursuant to § 212.75(b);

(B) the number of barrels of "imputed new crude oil," if any, determined pursuant to § 212.75(b), excluding any crude oil transported through the trans-Alaska pipeline;

(C) the number of barrels of crude oil transported through the trans-Alaska pipeline, if any; and

(D) the number of barrels of imputed stripper well crude oil, if any, determined pursuant to § 212.75(b).

Subsection (a)(3)(i), in 43 F. R. 26540 (6/20/78), effective 6/1/78, read as follows until its amendment in 43 F. R. 33679 (8/1/78), effective 9/1/78:

(3) *Unitized properties.* (1) With respect to each sale of crude oil from a unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing to the purchaser the number of barrels of—

(A) lower tier ("old") crude oil (separately identifying any California lower tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California lower tier crude oil at the time of the sale);

(B) upper tier ("new") crude oil, if any (separately identifying any California upper tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California upper tier crude oil at the time of the sale), including either "actual new crude oil" or "imputed new crude oil" determined pursuant to § 212.75(b), but excluding any crude oil transported through the trans-Alaska pipeline;

(C) crude oil transported through the trans-Alaska pipeline, if any; and

(D) imputed stripper well crude oil, if any, determined pursuant to § 212.75(b).

With respect to any unitized property for which the producer has determined a unit base production control level, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(3)(i) may be complied with by a one-time written certification to the purchaser of—

(A) the monthly unit base production control level, determined pursuant to § 212.75(b);

(B) the number of barrels of "imputed new crude oil," if any, determined pursuant to § 212.75(b), excluding any crude oil transported through the trans-Alaska pipeline;

(C) the number of barrels of crude oil transported through the trans-Alaska pipeline, if any; and

(D) the number of barrels of imputed stripper well crude oil, if any, determined pursuant to § 212.75(b); *provided, however,* that the producer shall certify to the purchaser the amounts and gravity of California lower tier crude oil and California upper tier crude oil in each sale.

Subsection (a)(3)(i), in 43 F. R. 33679 (8/1/78), effective 9/1/78, read as follows until its amendment in 44 F. R. 25828 (5/2/79), effective 6/1/79:

(3) *Unitized properties.* (i) With respect to each sale of crude oil from a unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing to the purchaser the number of barrels of—

(A) lower-tier ("old") crude oil (separately identifying any California lower tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California lower tier crude oil at the time of the sale);

(B) upper-tier ("new") crude oil, if any (separately identifying any California upper tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California upper tier crude oil at the time of the sale), including either "actual new crude oil" or "imputed new crude oil" determined pursuant to § 212.75(b), but excluding any crude oil transported through the trans-Alaska pipeline;

(C) crude oil transported through the trans-Alaska pipeline, if any;

(D) incremental tertiary crude oil determined pursuant to § 212.78; and

(E) imputed stripper well crude oil, if any, determined pursuant to § 212.75(b).

With respect to any unitized property (except such a property with respect to which any amount of crude oil is or at any time has been certified by the producer as incremental tertiary crude oil) for which the producer has determined a unit base production control level, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(3)(i) may be complied with by a one-time written certification to the purchaser of—

(A) the monthly unit base production control level, determined pursuant to § 212.75(b);

(B) the number of barrels of "imputed new crude oil," if any, determined pursuant to § 212.75(b), excluding any crude oil transported through the trans-Alaska pipeline;

(C) the number of barrels of crude oil transported through the trans-Alaska pipeline, if any; and

(D) the number of barrels of imputed stripper well crude oil, if any, determined pursuant to § 212.75(b); *provided, however,* that the producer shall certify to the purchaser the amounts and gravity of California lower tier crude oil and California upper tier crude oil in each sale.

Subsection (a)(3)(iii) in 41 F. R. 43393 (10/1/76), effective 9/1/76, and read as follows until its amendment in 44 F. R. 22010 (4/12/79), effective 6/1/79:

(iii) The certification required under this paragraph (a)(3) of this section shall be made within the consecutive two-month period immediately following the month of September 1976, or, with respect to any unitized property for which a unit base production control level has not been established prior to September 30, 1976, the certification required under this paragraph (a)(3) of this section shall be made within the consecutive two-month period immediately following the first month in which such unit base production control level is established.

Subsection (a)(4) originated in 41 F. R. 36172 (8/26/76), effective 9/1/76, and read as follows until its amendment in 41 F. R. 47390 (10/29/76), effective 9/1/76:

(4) *New purchasers.* With respect to any purchaser who has not purchased crude oil from the property (or the unitized property) concerned prior to August 1, 1976, the one-time certifications required under paragraphs (a)(2)

(ii) and (a)(3)(ii) of this section, and the certifications permitted under paragraphs (a)(2)(i) and (a)(3)(i) of this section, shall be made within 60 days from the date such purchaser first purchases crude oil from that property or unitized property.

Subsection (a)(4), in 41 F. R. 37309 (9/3/76), effective 9/1/76, read as follows until its republication without change in 41 F. R. 43393 (10/1/76), effective 9/1/76:

(4) *Other domestic crude oils the first sale of which is exempt from this part.* (i) With respect to each sale of crude oil exempt from the provisions of this part, other than crude oil produced from a stripper well property, the producer shall certify in writing once to each purchaser of crude oil produced and sold from that property that the first sale of crude oil produced and sold from that property is exempt from the provisions of this part.

(ii) For purposes of this paragraph (a)(4), domestic crude oil the first sale of which is exempt from the provisions of this part includes U. S.-owned petroleum sold by the Secretary of the Navy under the Naval Petroleum Reserves Production Act of 1976 (Pub. L. 94-258).

Subsection (a)(4), in 41 F. R. 43393 (10/1/76), effective 9/1/76, read as follows until its amendment in 43 F. R. 33679 (8/1/78), effective 9/1/78:

(4) *Other domestic crude oils the first sale of which is exempt from this part.* (i) With respect to each sale of crude oil exempt from the provisions of this part, other than crude oil produced from a stripper well property, the producer shall certify in writing once to each purchaser of crude oil produced and sold from that property that the first sale of crude oil produced and sold from that property is exempt from the provisions of this part.

(ii) For purposes of this paragraph (a)(4), domestic crude oil the first sale of which is exempt from the provisions of this part includes U. S.-owned petroleum sold by the Secretary of the Navy under the Naval Petroleum Reserves Production Act of 1976 (Pub. L. 94-258).

Subsection (a)(5) originated in 41 F. R. 37309 (9/3/76), effective 9/1/76, and read as follows until its amendment in 41 F. R. 43393 (10/1/76), effective 9/1/76:

(5) *New purchasers.* With respect to any purchaser who has not purchased crude oil from the property (or the unitized property) concerned prior to August 1, 1976, the one-time certifications required under paragraphs (a)(1), (a)(2)(ii), and (a)(3)(ii) of this section, and the certifications permitted under paragraphs (a)(2)(i) and (a)(3)(i) of this section, shall be made within 60 days from the date such purchaser first purchases crude oil from that property or unitized property.

Subsection (b) originated in 39 F. R. 42246 (12/4/76), effective 12/4/74, and read as follows until its amendment in 41 F. R. 36172 (8/26/76), effective 9/1/76:

(b) With respect to each allocation sale under § 211.65 of this chapter, the seller shall certify in writing to the purchaser the amount of old crude petroleum deemed (under the provisions of § 211.67(f) of this chapter) to be included in the volume of crude petroleum so sold. Such written certification shall be made within 25 days following the month in which the crude oil so sold is delivered to or for the account of the purchaser.

Subsection (b), in 41 F. R. 36172 (8/26/76), effective 9/1/76, read as follows until its amendment in 41 F. R. 37309 (9/3/76), effective 9/1/76:

(b)(1) Each seller of domestic crude oil, other than a producer of domestic crude oil covered by paragraph (a)(1) of this section shall, with respect to each sale of domestic crude oil either (i) an allocation sale pursuant to § 211.65 of Part 211, or (ii) a sale in which no volumes of old crude oil are deemed to have been transferred pursuant to § 211.67 (g) of Part 211, certify in writing to the purchaser the amount of old crude oil included in the volume of domestic

crude oil so sold. The certification shall also contain a statement that the price charged for the domestic crude oil is no greater than the maximum price permitted pursuant to this part.

(2) Each seller of domestic crude oil, other than a producer of domestic crude oil, shall make the certification required by this paragraph as soon as practicable after receipt of the required certifications from its sellers, but in no event later than 30 days following such receipt. However, if the domestic crude oil is not sold until after the expiration of the thirty-day period, the certification required by this paragraph shall be made within ten days following the sale of the domestic crude oil.

Subsection (b)(1), in 41 F. R. 37309 (9/3/76), effective 9/1/76, read as follows until its amendment in 42 F. R. 41565 (8/17/77), effective 6/1/77:

(b)(1) Each seller of domestic crude oil, other than a producer of domestic crude oil covered by paragraph (a) of this section, shall, with respect to each sale of domestic crude oil other than (i) an allocation sale pursuant to § 211.65 of Part 211, or (ii) a sale in which no volumes of domestic crude oil are deemed to have been transferred pursuant to § 211.67(g) of Part 211, certify in writing to the purchaser the respective volumes of and respective per barrel prices for the old crude oil, new crude oil, stripper well crude oil, and other domestic crude oils the first sale of which is exempt from the provisions of this part included in the volume of domestic crude oil so sold. The certification shall also contain a statement that the price charged for the domestic crude oil is no greater than the maximum price permitted pursuant to this part.

Subsection (b)(1), in 42 F. R. 41565 (8/17/77), effective 6/1/77 and read as follows until its amendment in 42 F. R. 62897 (12/14/77), effective 1/1/78:

(b)(1) Each seller of domestic crude oil, other than a producer of domestic crude oil covered by paragraph (a) of this section, shall, with respect to each sale of domestic crude oil other than an allocation sale pursuant to § 211.65 of Part 211, or a sale in which no volumes of domestic crude oil are deemed to have been transferred pursuant to § 211.67(g) of Part 211, certify in writing to the purchaser the respective volumes of and respective per barrel prices for the—

(i) lower-tier ("old") crude oil;

(ii) upper tier ("new") crude oil, exclusive of any crude oil transported through the trans-Alaska pipeline;

(iii) crude oil transported through the trans-Alaska pipeline;

(iv) stripper well crude oil; and

(v) other domestic crude oils the first sale of which is exempt from the provisions of this part—

included in the volume of domestic crude oil so sold. The certification shall also contain a statement that the price charged for the domestic crude oil is no greater than the maximum price permitted pursuant to this part.

Subsection (b)(1), in 42 F. R. 62897 (12/14/77), effective 1/1/78 read as follows until its amendment in 42 F. R. 64956 (12/29/77), effective 1/1/78:

(b)(1) Each seller of domestic crude oil, other than a producer of domestic crude oil covered by paragraph (a) of this section, shall, with respect to each sale of domestic crude oil other than an allocation sale pursuant to § 211.65 of Part 211, or a sale in which no volumes of domestic crude oil are deemed to have been transferred pursuant to § 211.67(g) of Part 211, certify in writing to the purchaser the respective volumes of and respective per barrel prices for the—

(i) lower tier ("old") crude oil (separately identifying any California lower tier crude oil, as defined in § 211.62 of Part 211 of this chapter);

(ii) upper tier ("new") crude oil, exclusive of any crude oil transported through the trans-Alaska pipeline;

(iii) crude oil transported through the trans-Alaska pipeline;

(iv) stripper well crude oil; and

(v) other domestic crude oils the first sale of which is exempt from the provisions of this part—included in the vol-

ume of domestic crude oil so sold. The certification shall also contain a statement that the price charged for the domestic crude oil is no greater than the maximum price permitted pursuant to this part.

Subsections (b)(1)(i)-(ii), in 42 F. R. 64956 (12/29/77), effective 1/1/78, read as follows until its amendment in 43 F. R. 26540 (6/20/78), effective 6/1/78:

(i) lower tier ("old") crude oil (separately identifying any California lower tier crude oil, as defined in § 211.62 of Part 211 of this chapter);

(ii) upper tier ("new") crude oil, exclusive of any crude oil transported through the trans-Alaska pipeline;

Subsection (b)(1), in 43 F. R. 26540 (6/20/78), effective 6/1/78, read as follows until its amendment in 43 F. R. 33679 (8/1/78), effective 9/1/78:

(b)(1) Each seller of domestic crude oil, other than a producer of domestic crude oil covered by paragraph (a) of this section, shall, with respect to each sale of domestic crude oil other than an allocation sale pursuant to § 211.65 of Part 211, or a sale in which no volumes of domestic crude oil are deemed to have been transferred pursuant to § 211.67(g) of Part 211, certify in writing to the purchaser the respective volumes of and respective per barrel prices for the—

(i) lower tier ("old") crude oil (separately identifying California lower tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California lower tier crude oil at the time of the sale);

(ii) upper tier ("new") crude oil (separately identifying any California upper tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California upper tier crude oil at the time of the sale), exclusive of any crude oil transported through the trans-Alaska pipeline,

(iii) crude oil transported through the trans-Alaska pipeline;

(iv) stripper well crude oil; and

(v) other domestic crude oils the first sale of which is exempt from the provisions of this part—included in the volume of domestic crude oil so sold. The certification shall also contain a statement that the price charged for the domestic crude oil has been determined in accordance with Subpart L of this part.

Subsection (b)(3) originated in 42 F. R. 62897 (12/14/77), effective 1/1/78.

Subsection (c) originated in 39 F. R. 42246 (12/4/76), effective 12/4/76 and read as follows until its amendment in 41 F. R. 36172 (8/26/76), effective 9/1/76:

(c) No firm may sell domestic crude petroleum unless it provides the certification required by this section. No firm may knowingly purchase domestic crude petroleum for which there is no certification as required by this section; provided, however, that the provisions of this paragraph do not apply to the sale of domestic crude petroleum to a firm under circumstances of economic or other coercion in which the buyer, because of its need for crude petroleum, had no reasonable alternative but to purchase the domestic crude petroleum for which there is no certification, and such firm promptly reports the purchase to the Federal Energy Administration for investigation.

Subsection (c), in 41 F. R. 36172 (8/26/76), effective 9/1/76 read as follows until it was deleted in 42 F. R. 62897 (12/14/77), effective 1/1/78 and the former subsection (d) was redesignated as subsection (c):

(c) With respect to each allocation sale under § 211.65 of Part 211, the seller shall certify in writing to the purchaser the amount of old crude oil deemed (under the provisions of § 211.67(f) of Part 211) to be included in the volume of crude oil so sold. Such certification shall be made within 45 days following the month in which the crude oil is delivered to or for the account of the purchaser.

Subsection (d) originated in 40 F. R. 28446 (7/7/75), effective 7/1/75 and

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In the Supreme Court of the United States

OCTOBER TERM, 1981

CHARLES GOSS, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

R. STANLEY CORBITT, PETITIONER

v.

UNITED STATES OF AMERICA

JAMES E. FISHER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners contend that the exclusive appellate jurisdiction of the Temporary Emergency Court of Appeals (TECA) over "all appeals from the district courts of the United States in cases and controversies arising under"

Section 5(a)(1) of the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 754(a)(1) (which incorporates Section 211(b)(2) of the Economic Stabilization Act of 1970, 12 U.S.C. 1904 note) extends to appeals by the United States from the dismissal of indictments charging mail fraud, wire fraud, false representation within the jurisdiction of the Federal Energy Administration, and conspiracy to violate the racketeering enterprise statute. Petitioners also contend that their indictments should be dismissed because the criminal provisions of the Emergency Petroleum Allocation Act of 1973 (EPPA), 15 U.S.C. 751 *et seq.*, preempt the application of other federal criminal statutes and that the EPAA regulations fail to provide fair warnings.[1]

Petitioner R. Stanley Corbitt (No. 81-952), together with the Crude Company, John Allen Masek,[2] the Mid-Atlantic Petroleum Company and others, was charged in a 29-count indictment returned in the United States District Court for the Southern District of Texas with participation in a fraudulent scheme to certify "old" oil as "new" oil and to make false certifications in furtherance of that scheme.[3]

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[1]Petitioner Fisher (No. 81-962) also contends that several counts in his indictment should have been dismissed on the ground that there was an inappropriate use of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961 *et seq.*, and that insufficient facts were alleged to constitute commercial bribery. Petitioner Fisher further contends that the court of appeals reviewed the dismissal of his indictment under an incorrect standard.

[2]The Crude Company and Masek are petitioners in No. 81-828, in which we filed a response on Dec. 3, 1981.

[3]As the court of appeals explained (81-962; Pet. App. A-3 n.2):

> The price at which domestic crude oil may lawfully be sold depends *inter alia* on its origin. As resellers, appellees were obliged to "certify" that the oil they traded came from "old" or "new" wells since different ceiling prices applied to each. The gravamen of the Government's charge is that appellees purchased "old" oil and resold it as "new," willfully using fraudulent means to miscertify it in the process.

Petitioners Charles Goss and Ball Marketing Enterprise (No. 81-936), and petitioner James E. Fisher (No. 81-962) were charged with the Uni Oil Company and others in an 84-count indictment returned in the United States District Court for the Southern District of Texas with participation in a similar scheme.

In the Mid-Atlantic Petroleum Company indictment, petitioner Corbitt was charged with 21 counts of mail fraud (in violation of 18 U.S.C. 1341), and with six counts of making false statements in a matter within the jurisdiction of the Federal Energy Administration (in violation of 18 U.S.C. 1001). Petitioner Corbitt was also charged with participating in a pattern of racketeering activity (in violation of 18 U.S.C. 1962(c)) and with conspiracy to violate that statute. In the Uni Oil Company indictment, petitioners Goss, Ball Marketing and Fisher were charged with 32 counts of mail fraud (in violation of 18 U.S.C. 1341), with 25 counts of wire fraud (in violation of 18 U.S.C. 1343), and with 25 counts of making false statements in a matter within the jurisdiction of the Federal Energy Administration (in violation of 18 U.S.C. 1001). They were also charged with participating in a pattern of racketeering activity (in violation of 18 U.S.C. 1962(c)), and with conspiracy to violate that statute.

The district court dismissed both indictments on the grounds that the EPAA preempts application of 18 U.S.C. 1341, 1001 and 1962 to the conduct alleged in the indictment and that the certification regulations (particularly 10 C.F.R. 212.131(b)(1)) do not give fair notice and cannot be the predicate for a criminal prosecution. The district court also dismissed the counts under 18 U.S.C. 1001 on the further ground that the statute does not apply to statements such as EPAA certifications, which are not submitted directly to a government agency. The appeals were consolidated and the court of appeals reversed, first rejecting the jurisdictional

argument that the district court decision in these cases arose under the EPAA, thus giving the TECA exclusive jurisdiction over the appeals (81-962 Pet. App. A6-A13).

Petitioners' contentions (see pages 1-2, *supra*) are not presently ripe for review by this Court. The court of appeals' decision places petitioners in precisely the same position they would have occupied if the district court had denied their motions to dismiss the indictments. If petitioners are acquitted following a trial on the merits, their claims will be moot. If, on the other hand, petitioners are convicted, they will then be able to present their present contentions to this Court, together with any other claims they may have, in a petition for a writ of certiorari seeking review of a final judgment against them. Accordingly, review by this Court of the court of appeals' decision would be premature at this time. See, *e.g.*, *Brotherhood of Locomotive Firemen & Enginemen* v. *Bangor & Aroostook R.R.*, 389 U.S. 327 (1967); *American Construction Co.* v. *Jacksonville, Tampa & Key West Ry.*, 148 U.S. 372, 384-388 (1893); *Hamilton Shoe Co.* v. *Wolf Brothers*, 240 U.S. 251, 257-258 (1916).[4]

It is therefore respectfully submitted that the petitions for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

DECEMBER 1981

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[4]Because this case is interlocutory, we are not responding on the merits to the questions presented by the petitions. We will file a response on the merits if the Court requests. On the jurisdictional question, we recently responded to a similar issue in *Zang* v. *United States*, No. 81-146; we have sent a copy of our brief in opposition in that case to counsel for petitioners.

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